Conceptus Inc.

Makers of Essure®

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January 20, 2011

Ms. Barbara Cassens
District Director, U.S. Department of Health and Human Services
Food and Drug Administration, HFR-PA100
1431 Harbor Bay Parkway
Alameda, CA 94502-7070

Re: **Response to FDA Form 483 Issued on January 6, 2011**

Dear Ms. Cassens:

Conceptus, Inc. ("Conceptus"), manufacturer of the Essure® permanent birth control system, hereby submits a response to the four observations noted in the FDA Form 483 issued to Conceptus on January 6, 2011, following an inspection of the Conceptus offices in Mountain View, California from December 8, 2010 through January 6, 2011 (Attachment 1). As we emphasized to FDA Investigator Timothy C. Grome, Conceptus is committed to ensuring its compliance with all statutory and regulatory requirements applicable to Conceptus' operations, including the Federal Food, Drug and Cosmetic Act ("FFDCA") and its implementing regulations, as well as applicable FDA guidance. As explained below, Observations 3 and 4 in the Form 483 have already been corrected and verified. With respect to the remaining two observations in which FDA noted that Conceptus failed to submit Medical Device Reporting ("MDR") reports, Conceptus respectfully submits that the applicable regulations do not require Conceptus to submit MDR reports for most of the (b) (4) noted under these observations. Thus, deficiencies should not have been cited against Conceptus in these cases, and FDA should not require that any corrective action be taken by Conceptus with regard to them.

Observation 1: *An MDR report was not submitted within 30 days of receiving or otherwise becoming aware of information that reasonably suggests that a marketed device may have caused or contributed to a death or serious injury.*

FDA noted that Conceptus was required to submit MDR reports in connection with three patient complaints concerning the Essure device, a soft and flexible insert that is placed in a woman's fallopian tubes and causes benign tissue in-growth which blocks the fallopian tubes. One complaint involved an incident in which a patient (b) (4) The other two complaints involved (b) (4)

A medical device manufacturer must submit MDR reports to FDA no later than 30 calendar days after the day that the manufacturer becomes aware of "information that reasonably suggests that a device may have caused or contributed to a death or serious injury."[1] Because the patient involved in the incident (b) (4) Conceptus determined that the device "may have caused or contributed to" a serious injury, and an MDR Report is required to be submitted to FDA. We became aware of the incident on (b) (4), and an MDR Report was submitted to FDA on (b) (4), within the 30-day submission timeframe stated in the regulations.

The two complaints involving (b) (4) however, (b) (4) were the (b) (4) that were (b) (4) FDA regulations define "caused or contributed" to mean that "a death or serious injury was or may have been attributed to a medical device, or that a medical device may have been a factor in a death or serious injury, including events occurring as a result of: (1) failure; (2) malfunction; (3) improper or inadequate design; (4) manufacture; (5) labeling; or (6) user error."[2] A March 1997 FDA Guidance entitled, "Medical Device Reporting for Manufacturers," defines "user error" as "any error made by the person *using the device*." (emphasis added).[3] (b) (4) (b) (4) (b) (4) (b) (4) Thus, under applicable FDA regulations and guidance, Conceptus is not required to submit MDR reports for patient complaints in which (b) (4) (b) (4)

An April 1996 FDA Guidance entitled, "Medical Device Reporting: An Overview," which provides explanation regarding when a device "may have" caused or contributed to a death or serious injury of a patient, offers further support for this position:

> If there is a reasonable possibility that the device caused or contributed to the death or serious injury, then the event should be reported. However, reporting entities should not assume unreasonable or unrealistic cause/effect relationships between devices and events. If the chance that a device may have caused or contributed to an event is very remote or very unlikely, the event should not be reported. Conversely, the 'may have' caused or contributed to standard should not be construed as requiring absolute certainty that an event was device related.[4]

As the above FDA Guidance suggests, it is "unreasonable" and "unrealistic" to presume that user error related to one medical device that led to an injury

[1] 21 C.F.R. § 803.20(b)(3)(i).
[2] 21 C.F.R. § 803.3.
[3] FDA Guidance, "Medical Device Reporting for Manufacturers," March 1997 at 36.
[4] FDA Guidance, "Medical Device Reporting: An Overview," April 1996 at 12.

implies that another, separate medical device may have caused or contributed to that injury. Thus, (b) (4) (b) (4) (b) (4) does not impute a causal or contributory relationship between the Essure device and (b) (4)

Further, even though FDA regulations do not require MDR reports to be submitted to FDA in connection with incidents involving (b) (4) (b) (4) Conceptus nevertheless has included complaints of this type in the (b) (4) of its (b) (4) Most recently, (b) (4) (b) (4) (b) (4) (b) (4) Specifically, it was reported that (b) (4) (b) (4) (b) (4) (b) (4) (b) (4) (Attachment 2). Until the issuance of the inspectional observations in the Form 483, FDA did not advise Conceptus that these disclosures were inadequate or deficient in any respect. As demonstrated by the Annual Report disclosures, Conceptus did not intend to conceal these types of incidents from FDA. Rather, Conceptus' decision not to submit MDR reports to FDA in connection with these cases reflects our reasoned and longstanding interpretation of FDA's regulatory requirements regarding MDR reporting. Given Conceptus' good faith understanding of its obligations with regard to the reporting of such cases, in order to bring this issue to a satisfactory conclusion, we have updated our complaint handling procedure to (b) (4) (b) (4) (b) (4) (Attachment 3).

Observation 2: *An MDR Report was not submitted within 30 days of receiving or otherwise becoming aware of information that reasonably suggests that a marketed device has malfunctioned and would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.*

FDA cited (b) patient complaints in which (b) (4) (b) (4) Although the Form 483 notes that (b) (4) (b) (4) (b) (4) (b) (4) (b) (4)

FDA regulations require that a medical device manufacturer submit MDR reports to FDA no later than 30 calendar days after the day that the manufacturer becomes aware of "information that reasonably suggests that a device has malfunctioned" and that this device or a similar device marketed by the manufacturer "would be likely to cause or contribute to a death or serious injury if the malfunction were to recur."[5] Conceptus acknowledges that the Essure device "malfunctioned" in these cases, since the device failed to "meet its performance specifications or otherwise perform as intended,"[6] namely, to cause permanent birth control (female sterilization) by bilateral occlusion of the fallopian tubes. Thus, the issue is whether the Essure device

[5] 21 C.F.R. § 803.20(b)(3)(ii).
[6] 21 C.F.R. § 803.3.

"would be likely to cause or contribute to a death or serious injury if the malfunction were to recur."

Because none of the cited complaints [redacted] the reports of [redacted] constitute mere "trivial impairment or damage" that does not rise to the level of a "serious injury."[7] However, the relevant standard is not whether those specific cases resulted in serious injury, but whether the device "would be likely to" cause or contribute to a death or serious injury "if the malfunction were to recur." Conceptus has collected and routinely reported to the FDA in the [redacted] This data includes [redacted] Of the cases where [redacted] that have been reported to FDA in the Essure PMA Annual Reports submitted to date, approximately [redacted] and were therefore also reported as MDRs. These statistics clearly demonstrate that the likelihood of a similar case that results in pain and subsequent surgical intervention is nothing other than remote. Consistent with applicable FDA regulations and guidance,[8] therefore, Conceptus concluded that MDR reports were not required to be submitted in connection with these complaints, and no corrective action should be required with regard to this observation in the Form 483. If Conceptus receives additional information on a previously-reported complaint, however, Conceptus evaluates such information in order to determine whether an MDR report should be submitted in connection with the revised complaint, as per applicable FDA regulations and guidance.

Observation #3: Risk analysis is incomplete. Specifically, [redacted] Since December 2012 according to [redacted] *database provided by the firm there have been* [redacted] *with* [redacted] *In the same time period according to the list of Medical Device Reports, there were 3 complaints reported for pain/perforation, 18 complaints for perforation and one for perforation and bleeding. In the database supplied with a complaint description I found* [redacted]

Conceptus issued CAPA-0021 to review and revise the [redacted] in response to this observation. The [redacted] included [redacted]

[7] Id.

[8] FDA Guidance, "Medical Device Reporting for Manufacturers," March 1997 at 9-10 ("FDA believes that once a malfunction has caused or contributed to a death or serious injury, a presumption that the malfunction is likely to cause or contribute to a death or serious injury has been established. This presumption will continue until the . . . manufacturer can show, through valid data, that the likelihood of another death or serious injury as a result of the malfunction is remote.").

(b) (4) however, (b) (4) To correct this observation, Conceptus updated the DFMEA to include (b) (4) In addition, Conceptus completed a risk analysis review which specifically addresses (b) (4)

The updated (b) (4) has been released as (b) (4) (**Attachment 4**); the revision of the (b) (4) was noted on the FDA Form 483 as the annotation "Promised to correct within 30 days" (**Attachment 1**). CAPA-0021 has been completed and closed (**Attachment 5**).

Observation #4: *Corrective and preventive action activities and/or results have not been documented. Specifically, after* (b) (4) *your firm's engineers learned from telephone conversations with engineers from* (b) (4) *that* (b) (4) *Your firm did not receive the contractor manufacturer's CAPA report until* (b) (4) *That CAPA* (b) (4) *Your firm covered this deviation under CAPA0014* (b) (4) *opened to document* (b) (4)

Although Conceptus had already initiated a corrective action (CAPA-0014) to document (b) (4) the FDA Investigator felt that a separate CAPA was required to (b) (4) CAPA-0015 (b) (4) (**Attachment 6**). (b) (4) that clarified the (b) (4) issues (**Attachment 7**). As a result of these corrective measures, the FDA Investigator annotated the FDA Form 483 "Corrected and verified" for this issue (**Attachment 1**).

A corrective action (CAPA-0022) was generated to address this issue. CAPA-0022 has been completed and closed (see **Attachment 8**).

* * *

Conceptus appreciates this opportunity to respond to the inspectional observations presented by the FDA. We are committed to resolving the observations where corrective action is warranted, and have been working toward this goal. We look forward to discussing these efforts with you further and updating you on our progress. Please do not hesitate to contact the undersigned should you have any additional questions or require additional information regarding this matter.

Respectfully submitted,

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